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No. 86-478

In the Supreme Court of the United States

OCTOBER TERM, 1986

FIRST NATIONAL BANK OF CHICAGO, ETC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioner challenges the court of appeals' holding that Section 6512(a) of the Internal Revenue Code[1] deprived the district court of jurisdiction to hear petitioner's claim for refund of federal estate taxes, because the estate previously had filed a petition with the Tax Court contesting the same tax liability.

1. Petitioner was the trustee of six inter vivos trusts funded by the estate of Hazel B. Crummer. In 1974, the Commissioner asserted a deficiency in estate taxes against the estate, and the estate filed a petition with the Tax Court seeking a redetermination of the deficiency. Approximately three years later, the parties stipulated to a deficiency of $1,340,604, plus statutory interest. Pursuant to the parties'

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[1]Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

stipulation, the Tax Court on October 28, 1977, entered its decision that the estate was liable in those amounts. The estate paid the stipulated deficiency in installments, making the last payment on April 17, 1978. The total interest due was determined to be $630,700, and that amount was also paid on April 17, 1978. Pet. App. A2.

The estate initially claimed the $630,700 interest expense as a deduction on its fiduciary income tax return. However, this turned out to be less beneficial to the estate than deducting the interest as an administrative expense on its estate tax return. See I.R.C. § 2053(a)(2). Therefore, on April 2, 1980, the estate filed with the IRS a claim for refund of estate taxes, seeking to deduct the interest payment against the gross estate and to recalculate the estate tax liability previously determined by the Tax Court. The Commissioner rejected the refund claim, and petitioner, as the fiduciary of the beneficiaries of the estate, instituted this refund suit in the United States District Court for the Central District of California. Pet. App. A2.

The sole issue disputed by the parties was whether the district court had jurisdiction to entertain petitioner's suit. The government maintained that the refund action was barred by the res judicata effect of the Tax Court's decision and by Section 6512(a) of the Code, which deprives the district courts of jurisdiction where a taxpayer has filed a petition in the Tax Court to contest a deficiency asserted by the IRS. The district court rejected both arguments (Pet. App. B1-B5). It held that res judicata did not apply because the interest expense did not arise until after the completion of the Tax Court proceedings (*id.* at B3). And the court held that Section 6512(a) did not apply to a claim based solely on interest (Pet. App. B3-B4). Accordingly, it concluded that the estate was entitled to an estate tax refund of $478,794 plus interest, less an adjustment in the sum of $49,056 plus interest; the latter amount was intended to reflect the tax

benefit that had resulted from the deduction of the interest expense on the estate's fiduciary income tax return (*id.* at C1-C2).

The court of appeals unanimously reversed, holding that Section 6512(a) barred petitioner's refund action. The court explained that Section 6512(a), by its plain terms, prohibits a taxpayer from suing in district court for a recomputation of an estate tax liability that has already been redetermined by the Tax Court. Pet. App. A4-A5. The court of appeals accordingly found it unnecessary to reach the government's res judicata contention (*id.* at A3).

2. The court of appeals correctly held that petitioner's refund action was barred by Section 6512(a) of the Code. That section generally provides that, if the Commissioner has mailed a notice of deficiency with respect to estate tax and if the taxpayer has filed a timely petition with the Tax Court, "no credit or refund * * * of estate tax in respect to the taxable estate of the same decedent * * * shall be allowed or made and no suit by the taxpayer for recovery of any part of the tax shall be instituted in any court." The language of the statute plainly establishes that a taxpayer cannot bring a refund suit in district court alleging that the estate tax liability determined by the Tax Court in a prior proceeding was too high.

a. Petitioner contends (Pet. 12-14) that Section 6512(a) is inapplicable here because statutory interest is not part of the "tax" and played no role in the deficiency proceedings in the Tax Court. That contention is without merit. As the court of appeals explained, petitioner does not dispute the amount of interest due and paid on the estate tax deficiency as redetermined by the Tax Court. Rather, petitioner "is seeking a recomputation of its *estate tax liability*" based upon the deduction of that interest against the gross estate (Pet. App. A5 (emphasis in original)). Contrary to petitioner's suggestion (Pet. 13, 21-22), therefore, the decision

below is fully consistent with *Britton* v. *United States*, 532 F. Supp. 275, 277 (D. Vt. 1981), aff'd, 697 F.2d 288 (2d Cir. 1982), which involved a suit for refund of allegedly excessive amounts of interest paid on the Tax Court judgment.

b. Petitioner also errs in contending (Pet. 14-19) that this case falls within the exception set forth in Section 6512(a)(2). That subsection provides that the general prohibition against district court jurisdiction set forth in Section 6512(a) does not apply "[a]s to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final." But petitioner paid the deficiency determined by the Tax Court and the statutory interest thereon, exactly as it was directed by the Tax Court's decision. Thus, the estate clearly did not pay any amount "in excess of [the] amount computed in accordance with the decision of the Tax Court." Instead, as the court of appeals correctly observed, the refund petitioner now seeks is grounded solely upon its attempt to obtain a "redetermination in the district court of the estate tax, which was the subject of the prior Tax Court proceedings and judgment" (Pet. App. A4).

Petitioner asserts (Pet. 18) that the amount of interest available as a deduction was indeterminate at the time the parties agreed to the stipulated deficiency in the Tax Court, and hence that the literal application of Section 6512(a) contravenes "[f]airness, reason, and justice." That contention is plainly mistaken. At the time the stipulation was agreed upon, the estate could have calculated the interest due, claimed a deduction therefor against the gross estate, and adjusted the stipulated deficiency accordingly. Alternatively, as petitioner now recognizes (Pet. 18-19), it could have asked the Tax Court to defer entry of judgment for approximately six months until final payment of the interest occurred, whereupon an appropriate adjustment of the deficiency could have been made. The estate evidently failed

to take such steps because of its belief that the proper treatment of the interest expense was to deduct it on the estate's fiduciary income tax return. That belief may have been erroneous, but that is no reason to ignore the plain language of the statute. Section 6512(a) operates "in effect [as] a statute of limitations," barring refund actions based upon events that occur following the final Tax Court determination. *United States* v. *Wolf*, 238 F.2d 447, 450-451 (9th Cir. 1956). See also *Elbert* v. *Johnson*, 164 F.2d 421, 424 (2d Cir. 1947) (where Tax Court had no jurisdiction to grant relief requested, subsequent refund suit was nonetheless barred); *Moir* v. *United States*, 149 F.2d 455, 458-460 (1st Cir. 1945) (petition to Tax Court barred subsequent action for refund of estate taxes based upon the deduction of attorney's fees).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

DECEMBER 1986

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[2]Petitioner's contention (Pet. 20) that the decision below conflicts with decisions of other circuits is wholly without merit. In none of the cases relied upon by petitioner did the estate initiate proceedings in the Tax Court, and hence the applicability of Section 6512(a) was not in issue and was not addressed by the courts. Those cases did consider the application of res judicata principles to an estate tax refund suit based on an attempt to deduct administrative costs against the gross estate. Hence, they might be relevant had the court of appeals ruled that res judicata principles barred the refund suit here. The court, however, explicitly declined to reach that issue (Pet. App. A3), and it therefore is not properly before this Court.